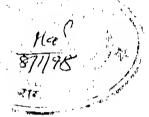


# असाधारण EXTRAORDINARY

माग II—खण्ड 2 PART II—Section 2

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके। Separate paging is given to this Part in order that it may be filed as a separate compilation.

# LOK SABHA

The following Bills were introduced in Lok Sabha on 16th May, 1997.

THE BROADCASTING BILL, 1997

# ARRANGEMENT OF CLAUSES

## CHAPTER I

**PRELIMINARY** 

#### **CLAUSES**

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- 2. Definitions.

# CHAPTER II

THE BROADCASTING AUTHORITY OF INDIA

- 3. Establishment and composition of Authority.
- 4. Removal and suspension of Chairperson and Members.
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- 9. Licences to be granted by the Authority.
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- 11. Period of licence, etc.
- 12. Eligibility and restrictions for licences.
- 13. Grant of licence for satellite broadcasting services.
- 14. Grant of licence for Direct-to-Home Services.
- 15. Special provisions for satellite broadcasting and Direct-to-Home Services.
- 16. Grant of licence for terrestrial broadcasting services.

## CLAUSES

- 17. Grant of licence for Local Delivery services.
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- 19. Funds, accounts, budget and audit of the Authority.
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- 21. Offences and punishment.
- 22. Special provision for certain foreign satellite broadcasting services.
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- 24. Procedure and powers of the Authority.
- 25. Powers of the Central Government.
- 26. Powers of the Authority to seek information, conduct enquiries, take evidence, etc.
- 27. Chairman, members, etc. to be public servants.
- 28. Protection of action taken in good faith.
- 29. Delegation of Power.
- 30. Application of other laws not barred.
- 31. Power to make rules.
- 32. Power to make regulations.
- 33. Rules and regulations to be laid before Parliament.
- 34. Power to remove difficulties.
- 35. Repeal and saving.

# THE SCHEDULE

# BILL NO. 71 OF 1997

A Bill to provide for the establishment of an independent authority to be known as the Broadcasting Authority of India, for the purposes of facilitating and regulating broadcasting services in India and to provide for matters connected therewith or incidental thereto.

BE it enacted by parliament in the Forty-eighth Year of the Republic of India as follows:—

# CHAPTER I

# **PRELIMINARY**

- 1. (1) This Act may be called the Broadcasting Act, 1997.
- (2) It extends to the whole of India.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Short title, extent and commencement. Definitions.

- 2. In this Act, unless the context otherwise requires,—
- (a) "Aakashvani" shall have the same meaning as is assigned to it in clause (a) of section 2 of the Prasar Bharati (Broadcasting Corporation of India) Act, 1990;

25 of 1990.

- (b) "appointed" day means the day appointed under section 3;
- (c) "Authority" means the Broadcasting Authority of India established under section 3:
- (d) "basic service" means a tier of service, to which subscription is required for access to any other tier of service;
- (e) "broadcasting service" means a service whereby signs or signals transmitted, whether or not encrypted, comprise—
  - (i) any programme capable of being received, or received and displayed, as visual images, whether moving or still; or
    - (ii) any sound programme for reception; or
  - (iii) any programme, being a combination of both visual image (whether moving or still) and sound for reception or reception and display;

by persons having equipment appropriate for receiving, or receiving and displaying, as the case may be, that service, irrespective of the means of delivery of that service;

- (f) "cable television service" means a local delivery service without using MMDS and "cable television operator" shall be construed accordingly;
- (g) "Chairperson" means the Chairperson of the Authority appointed under sub-section (4) of section 3;
  - (h) "channel" means a set of frequencies used for transmission of a programme;
- (i) "decoder" means an equipment for decoding an encrypted channel or a compressed digital channel to facilitate its intelligible reception;
- (j) "Doordarshan" shall have the same meaning as is assigned to it in clause (h) of section 2 of Prasar Bharati (Broadcasting Corporation of India) Act, 1990

25 of 1990.

- (k) "Direct-to-Home service" means a service which uses a Ku band satellite system for distribution of programmes direct to subscriber's premises without the help of a local delivery system;
- (1) "encrypted" means treated electronically or otherwise for the purpose of preventing intelligible reception by unauthorised persons;
- (m) "frequency" means frequency of electro-magnetic waves used for transmission of broadcasting service;
- (n) "foreign satellite broadcasting service" means a satellite broadcasting service transmitted from a foreign country receivable in India;
- (o) "free-to-air broadcasting service" means a broadcasting service made available for reception by broadcasting apparatus commonly available to the public without payment of a subscription fee;
- (p) "foreign satellite system" means a satellite system other than Indian satellite system;
- (q) "Indian satellite system" means a satellite system in an orbital slot allocated to India by the International Telecommunication Union;
  - (r) "licence" means a licence issued by the Authority under this act;
- (s) "licensed service" means a broadcasting service licensed by the Authority;

SBC.

- (t) "Local Delivery service" means a service for distribution of programmes by a ground transmission system using cable or MMDS or a combination of both to be called "Local Delivery system" for simultaneous reception by multiple subscribers:
- (u) "Member" means a part-time member or an ex officio Member, as the case may be, of the Authority referred to in sub-section (3) of section 3 and includes the Chairperson;
- (v) "MMDS" means a ground wireless transmission system used for multipoint multi-channel distribution of programmes on frequencies notified in the Official Gazette by the Wireless Adviser to the Government of India;
- (w) "notification" means a notification published in the Official Gazette and the expression "notified" shall be construed accordingly;
- (x) "permitted service" means a foreign satellite broadcasting service permitted by the Authority for reception in India;
  - (y) "prescribed" means prescribed by rules made under this Act;
  - (z) "private communication" means—
- (i) a communication between two or more persons that is of a private or domestic nature;
- (ii) an internal communication of a business, government agency or other organisation for the purpose of the operation of the business, agency or organisation; and
  - (iii) communications in such other circumstances as may be prescribed.
  - (za) "programme" in relation to a broadcasting service, means,—
- (i) any matter the purpose of which is related to entertain, educate or inform public, or
- (ii) any advertising or sponsorship matter, whether or not of a commercial kind;

but does not include any matter that is wholly related to or connected with any private communication.

- (zb) "programme standard" means standard determined by the Authority relating to the content or delivery of programmes in respect of licensed services or permitted services;
- (zc) "public service broadcaster" means any body created by an Act of parliament for the purpose of public service broadcasting:

Provided that till the commencement of the Prasar Bharati Act, 1990, the public service broadcaster shall mean the All India Radio or the Doordarshan as the case may be;

- (zd) "regulations" means regulation made by the Authority under this act;
- (ze) "satellite broadcasting service" means a service provided by using a satellite and received with or without the help of a local delivery system but does not include Direct-to-Home service;
- (zf) "satellite radio broadcasting service" means a satellite broadcasting service for providing audio programmes;

25 of 1990.

- (zg) "satellite television broadcasting service" means a satellite broadcasting service for providing video programmes with or without audio;
- (zh) "Secretary-General" means the Secretary-General appointed under subsection (1) of section 6;
  - (zi) "service provider" means provider of a broadcasting service;
- (zj) "station" means any broadcasting station with studios or transmitters or both and includes a relay station;
- (zk) "subscriber" of a service means a person who receives the service at a place indicated by him without further transmitting it to any other person;
- (zl) "subscription fee" means any form of consideration given by the subscriber,
- (zm) "terrestrial broadcasting service" means a service provided by using a ground transmitter but does not include a local delivery service;
- (zn) "terrestrial radio broadcasting service" means a terrestrial broadcasting service for providing audio programmes;
- (zo) "terrestrial television broadcasting service" means a terrestrial broadcasting service for providing video programme with or without audio;
- (zp) "tier of service" means a category of Local Delivery service or Directto- Home service for which a separate rate is charged by the service provider;
- (zq) "uplinking" with reference to satellite broadcast or Direct-to-Home service means uplinking of programme transmission from an earth station to the satellite;
- (zr) "Wireless Adviser" means the Wireless Adviser to the Government of, India;
  - (zs) "year" means the financial year.

#### CHAPTER II

#### THE BROADCASTING AUTHORITY OF INDIA

Establishment and composition of Authority.

- 3. (1) With effect from such date as the Central Government may be notification appoint in this behalf, there shall be established for the purposes of this Act an Authority, to be known as the Broadcasting Authority of India.
- (2) The Authority shall be a body corporate by the aforesaid, having perpetual succession and a common seal with power to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall by the said name sue and be sued.
  - (3) The Authority shall consist of the following Members, namely:-
    - (a) a Chairperson;
  - (b) not more than eleven Part-time members to be appointed by the Central Government in consultation with the Chairperson;
  - (c) Secretary to the Government of India incharge of the Ministry of information and Broadcasting, ex officio;
  - (d) Secretary to the Government of India incharge of the Department of Telecommunications, ex officio;
    - (e) Secretary General, ex officio.

- (4) The Chairperson shall be apointed by the President of India on the recommendation of a Committee consisting of—
  - (a) the chairman of the Council of States, who shall be the Chairman of the Committee;
  - (b) the Minister incharge of the Ministry of Information and Broadcasting to the Government of India; and
  - (c) the Chairman of the press Council of India established under section 4 of the press Council Act, 1978.
- (5) No appointment of a Member shall be invalidated merely by reason of any vacancy in, or any defect in the constitution of, the Committee appointed under subsection (4).
- (6) The Chairperson shal be appointed from amongst the persons of eminence with more than fifteen years of experience in one of the fields of administration, law, business management, broadcasting programme, broadcasting engineering, information management, journalism and communication.
- (7) The Chairperson shall be a whole time member and shall hold office for a term of five years from the date on which he enters upon his office or till he attains the age of sixty-five years, whichever is earlier and he shall not be eligible for reappointment.
- (8) The Part-time Member shall be from amongst the persons of eminence in public life having knowledge or experience in one of the fields of education, literature, sports, culture, art, film, music, dramatics, broadcast programme, information management, communication, law, finance, administration, journalism, and business management.
- (9) A part-time Member shall hold office for a term of three years from the date on which he enters upon his office and he shall be eligible for reappointment for a second term
- (10) The salary and allowances payable to and other conditions of service of the Chairperson shall be such as may be prescribed.
- (11) The allowances payable to the Part-time Members shall be such as may be prescribed.
- (12) A person having any interest, direct or indirect, in any broadcasting agency shall not be eligible for appointment as Chairperson or a part-time Member.
  - (13) No act or proceeding of the Authority shall be invalidated merely by reason of.
  - (a) any vacancy in, or any defect in the constitution of, the Authority or such committee; or
    - (b) any defect in the appointment of a person acting as a Member; or
  - (c) any irregularity in the procedure of the Authority not affecting the merits of the case.
- 4. (1) The Chairperson or a part-time Member may be removed or suspended from his office by the President in the manner and on grounds provided under article 317 of the Constitution for removal or suspension of the Chairman or any other Member of the Union public Service Commission;

Removal suspensio Chairpers and Mem

Provided that a Part-time Member shall not be removed from his office on the ground that he is engaged during his term of office in any paid employment outside the duties of his office.

37 of 1978.

(2) The Chairperson or any other part-time Member may resign his office by giving notice thereof in writing to the president of India and on such resignation begin accepted, the Chairperson or other member shall be deemed to have vacated his office.

Meeting of Authority. 5.(1) The Authority shall meet at such times and places and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be provided by regulations:

Provided that there shall not be less than eight meetings every year but two months shall not intervene between one meeting and the next meeting.

- (2) The quorum at the meetings of the Authority shall be fifty per cent. of the total number of Members.
- (3) A member shall be deemed to have vacated his office if he absents himself for three consecutive meetings of the Authority without the leave of the Chairperson.
- (4) The Chairperson shall preside at the meetings of the Authority and if for any reason he is unable to attend any meeting, any other Member elected by the Member's present at such meeting, shall preside at the meetings.
- (5) All questions which come up before any meeting of the Authority shall be decided by a majority of the votes of the members present and voting and, in the event of an equalityrof votes, the Chairperson, or in his absence, the person presiding, shall have and exercise a second or casting vote.

Secretary-General of Authority and other officers.

- 6. (1) The Central Government shall make available to the Authority, a panel of five officers of the rank of the Secretary to the Government of India and the Authority may appoint one of them as the Secretary-General of the Authority.
- (2) The Secretary-General shall be the Chief Executive Officer of the Authority and shall exercise such powers and discharge such functions of the Authority as may be delegated to him by the Authority.
- (3) The Authority may appoint such officers and other employees as it considers necessary for the efficient discharge of its functions under this Act in the manner as provided by the regulations.
- (4) The salary and allowances payable to and other conditions of service of the officers and other employees of the Authority shall be such as may be determined by regulations.

#### CHAPTER III

#### **FUNCTIONS OF AUTHORITY**

Punctions of Authority.

- 7. (1) The functions of the Authority shall be—
- (i) to carry out frequency planning of such frequencies or band of frequencies assigned to it by the wireless adviser to the Government of India for the purposes of broadcasting services;
  - (ii) to grant licences for broadcasting services;
- (iii) to ensure that wide range of broadcasting services are available throughout India;
- (iv) to ensure fair and effective competition in the provision of broadcasting services;
- ( $\nu$ ) to ensure the provision of services of high quality and offer a wide range of programmes to appeal to variety of tastes and interests;
  - (vi) to determine by regulations the programme code and standard;

- (vii) to receive complaints for violation of code, provisions of this Act and rules and regulations made thereunder and for violation of conditions of licence and take such remedial measures as it considers necessary:
- (viii) to consider and decide on fairness complaints referred to under subclauses (i) and (ii) of clause (a) of sub-section (2);
- (ix) to consider and decide standards.complaints referred to under clauses (b), (c) and (d) of sub-section (2);
- (x) to set technical and other quality standards to ensure a reasonable quality of reception by means of regulations;
  - (xi) to perform such other functions as may be prescribed.
- (2) The Authority may appoint a committee or committees of experts to adults un-
  - (a) practices to be followed in connection with the avoidance of—
    - (i) unjust and unfair treatment to any person in programmes:
  - (ii) unwarranted infringement of privacy in, or in connection with, obtaining of material included in such programmes;
- (b) practices to be followed in connection with the portrayal of violence in programmes;
- (c) practices to be followed in connection with the portrayed of sexual conduct in programmes;
  - (d) standards of taste and decency for programmes generally.
- (3) The Authority may appoint a committee or committees of experts to monitor programmes and to make reports on the portrayal of violence and sexual conduct in and the standards of taste and decency observed in, such programmes generally and such report may include an assessment of either or both of the following, namely:-
  - (t) the attitudes of the public at large towards the portrayal of violence or sexual conduct in, or towards the standards of taste and deceasy observed in, proarammes: and
  - (W) any officers or potential effects on the attitudes or behaviour of particular categories of persons of the portraval of violence or sexual conduct in such programmes or of any failure to observe standards of taste and decency in such programmes.

## CHAPTER IV

#### LICENCES

8. No person shall, after the commencement of this Act, provide any broadcasting service specified in sub-section (1) of section 9 without obtaining a licence in accordance with the provisions of this Act.

**Prohibitionion** broadcasting service without licence.

9. (1) The Authority may grant licences for the following broadcasting services. numely:-

Licenses to be granted by Authority.

- (m) Terrestrial Radio Broadcasting;
- (b) Terrestrial Television Broadcasting;
- (c) Satellite Radio Broadcasting;
- (d) Satellite Television Broadcasting:
- (e) Direct to Home Broadcasting;
- (f) Local Delivery Services;

- (g) such other services as may be prescribed.
- (2) The Authority may further categorise the Terrestrial Broadcasting Services into analogue and digital and also into national, regional, local, restricted local services or any other similar service for the purposes of licences under this section and prevention of their accumulation under section 12.
  - (3) Nothing contained in this section shall apply to a public service broadcaster:

Provided that such public service broadcaster shall comply with all other provisions of this Act.

Conditions of licence.

- 10. (1) The licence shall be granted subject to the following conditions, nemely:—
- (i) that the licensee shall ensure that nothing is included in the programme of the licensee which offends against good taste or decency or is likely to encourage or incite to crime or to lead to disorder or to be offensive to public feeling;
- (ii) that the licensee shall ensure that the news given in its programmes is presented with due accuracy and impartiality;
- (iii) that the licensee shall ensure that due impartiality is maintained in respect of social or political issues or matter relating to public policy;
- (iv) that the licensee shall ensure that due responsibility is exercised with respect to religious programmes with a view to avoiding—
  - (a) improper exploitation of religious susceptibilities; and
- (b) offence to the religious views and beliefs of those belonging to a particular religior, or religious denomination;
- ( $\nu$ ) that the licensee shall ensure that due emphasis is given in his programmes to promote values of national integration, religious harmony, scientific temper and Indian culture;
- (vi) that the licensee shall ensure that such time, as may be determined by the Authority, is earmarked for broadcasting of—
  - (a) children's programmes, educational programmes, developmental programmes and programmes of Indian (regional or local) origin; and
    - (b) a range of diversity of independent production;
- (vii) that the licensee shall follow the programme standards and codes set by the Authority;
- (viii) that the licensee shall pay such licence fee in such manner as may be determined by the regulations;
- (ix) that the licensee shall not carry out networking of local or regional broadcasting services without prior approval of the fauthority;
- (x) that the Authority may vary the conditions of the licence by giving to the licensee a reasonable opportunity of being heard; and
  - (xi) such other conditions as may be determined by the regulations.
- (2) The licence granted for Direct-to-Home service or Local Delivery service shall be subject to the following conditions in addition to the conditions referred to in sub-section (1) nemely:—
  - (i) that the licensee shall provide a tier of basic service which may include—

- (a) a minimum number and type of terrestrial broadcasting services for every permitted service as determined by the regulation; and
- (b) a minimum number and type of broadcasting services of the public service broadcaster as determined by the regulations;
- (ii) that the licensee shall include only licensed services or permitted services in his delivery package for the purposes of distribution;
- (iii) that the licensee shall use not more than such number of channels as determined by the regulations out of the total channels capacity of the system for providing his own programming:

Provided that such programmes as referred to in sub-clause (iii) above shall be subject to the programme standards and codes and such other conditions as may be required by the Authority for other broadcasting services.

11. (1) The period of licence for each category shall be for such period not exceeding ten years as may be determined by the rgulations.

Period of licence, etc.

- (2) A licence shall not be transferable.
- (3) A licence shall lapse prior to its normal expiry in case of insolvency or death of the licensee.
- 12. (1) No person specified in Part I of the Schedule shall be eligible for the grant of a licence under this Act.

Eligibility and restrictions for licences.

(2) No person shall be given the number of licences for a category of service more than the number prescribed for the category of service.

Explanation—For the purpose of this sub-section, the category of service shall be the same as referred to in section 9.

- (3) No person shall be granted licence for more than one category of services specified in Part II of the Schedule.
- (4) There shall be such restrictions on cross media ownership between the newspaper and broadcasting service as specified in Part III of the Schedule.
- (5) The Central Government may, by notification in the Official Gazette, modify any limit on interest or equity holding in the body corporate or companies referred to in the Schedule.
- (6) For the purposes of this section "person" includes connected persons referred to in paragraph 3 of Part IV of the Schedule.
- 13. (1) Any person desirous of obtaining a satellite broadcasting licence shall apply to the Authority in such form as may be specified by the regulations.
  - (2) If the Authority is satisfied that the applicant-
  - (a) has acquired transponder either on an Indian satellite system or on a foreign satellite system;
  - (b) has obtained technical clearance in respect of the transponders, from the Wireless Adviser for the purposes of providing the proposed service; and
  - (c) has fulfilled all other conditions laid down under this Act and the rules and regulations made thereunder,

it may grant a licence to such person for satellite broadcasting service on payment of such fee as may be determined by the regulations:

Provided that if the Authority refuses to grant the licence, it shall, before such refusal, give to the applicant an opportunity of being heard:

Provided further that a person providing a foreign satellite broadcasting service immediately before the commencement of this Act may continue to do so without a

Grant of licence for satellite broadcasting services. licence for a period of one month from such commencement, and if he has made an application for such licence under this Act within the said period of one month and such application is in the form and contains the particulars, as specified by the regulations, till the disposal of such application by the Authority.

Grant of licence for Direct-to-Home services.

- 14. (1) The Authority shall invite bids for grant of licence for Direct-to-Home service and the licence shall be granted to the highest bidder if he fulfils all the conditions for the grant of such licence.
- (2) The Authority shall grant such number of licences, not less than two, as may be prescribed.

Special provisions for satellite broadcasting and Direct-to-Home services.

- 15. (1) For the purposes of sections 13 and 14, the Wireless Adviser shall—
- (i) give technical clearance for licensing of satellite broadcasting services or Direct-to-Home Services on Indian satellite system or a foreign satellite system:

Provided that such clearance may be refused on technical or security considerations;

- (ii) in cases where operations of the services are permitted with foreign satellite system, while giving technical clearance for relicensing or renewal of such services, give priority for their operations with Indian satellite system;
- (2) The licensee shall carry out the uplinking of satellite broadcasting services or Direct-to-Home services from India only:

Provided that uplinking from outside the country may be permitted in respect of these services for coverage of live events taking place outside the country subject to such criteria as determined by the regulations:

Provided further that the Authority may also permit continuance of upfiffking of satellite broadcasting services being received in India immediately before the commencement of this Act from outside the country till such time as it is reasonably required for shifting or creating the necessary uplinking facilities in India on payment of such additional licence for as deemed fit.

Grant of licence for terrestrial broadcasting services.

Grant of licence for

services.

Local Delivery

- 16. (1) The Authority shall invite bids for grant of licence for terrestrial broadcasting service and the licence shall be granted to the highest bidder if he fulfils all the conditions for the grant of such licence.
- (2) Notwithstanding anything contained in such-section (1), the Authority may grant licences to such institutions as may be notified for terrestrial broadcasting services through restricted bids or on payment of such licence fee as may be determined by the regulations:

Provided that no institution shall be notified under this sub-section unless the object of such institution is to provide education, community service, environment protection or health awareness:

Provided further that licence under this sub-section may be granted for such restricted area as may be determined by the regulations.

- (3) The Wireless Adviser, shall assign to the Authority for the purpose of grant of terrestrial broadcasting service licence such frequencies or band of frequencies as it may determine in consultation with the Authority.
- 17. (1) The Authority shall grant two licences for Local Delivery service for each telecom circle as identified by the Central Government:

Provided that the Authority on technical or administrative grounds may restrict or widen a telecom circle for the purposes of this sub-section.

(2) The Authority shall invite bids for grant of licence for Local Delivery service and the licence shall be granted to the highest bidder if he fulfils all the conditions for the grant of such licence.

- (3) The Wireless Adviser after consulting the Authority, shall assign frequencies for MMDS for providing Local Delivery services, wherever it is required.
- (4) The Authority shall exempt the non-commercial establishments under common ownership from obtaining a licence for the purpose of providing cable television services for the exclusive use of their members.
- (5) The Central Government, may, by notification confer upon any licensee of the local delivery services, such rights and obligations, as it may consider necessary, in respect of placing and maintaining of his cable networks as available to the telegraph authority under part-III of the Indian Telegraph Act, 1885.
- 18. (1) The Authority may take following actions in case of breach of any terms of the licence, after providing an opportunity to the licensee of being heard, namely:—

Enforcement of licences

- (a) direct licensee to broadcast correction or apology or not to repeat a programme; or
  - (b) to impose a penalty, which may extend up to rupees fifty lakhs; or
  - (c) suspend the licence for a specified period; or
  - (d) curtail the period of the licence; or
  - (e) revoke the licence.
- (2) An aggrieved person may prefer an appeal against an action of the Authority in the High Court having jurisdiction within thirty days of such action.

Explanation.— For the purpose of this sub-section, "High Court having jurisdiction" means the High Court within the jurisdiction of which the aggrieved person ordinarily resides or carries on business or personally works for gain relating to the subject matter of the action against whiuch the appeal is preferred.

#### CHAPTER V

#### FINANCE, ACCOUNTS AND AUDIT

19. (1) The proceeds of the licence fee shall be credited to the Consolidated Fund of India.

Funds, accounts, budget and audit of the Authority.

- (2) The Central Government may for enabling the Authority to discharge its functions efficiently, after due appropriation made by Parliament by law in this behalf, pay to the Authority in each financial year such sums of money as the Government considers necessary by way of grants-in-aid.
- (3) The Authority shall have its own fund and all the receipts of the Authority shall be credited to the fund and all payments by the Authority shall be made therefrom. All money belonging to the fund shall be deposited in one or more Nationalised Banks in such manner as the Authority may decide and the Authority may spend such sums as it thinks fit for performing its function under this Act.
- (4) The Authority shall prepare, in such form and at such time each year as may be prescribed, a budget in respect of the financial year next ensuing showing—
  - (a) the expenditure which is proposed to be met from the internal resources of the Authority; and
  - (b) the sums required from the Central Government to meet other expenses, and copies thereof shall be forwarded to the Central Government.

13 of 1885

- (5) The Authority shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form and in such manner as may be prescribed.
- (6) The accounts of the Authority shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Authority to the Comptroller and Auditor-General.
- (7) The Comptroller and Auditor-General of India and any person appointed by him in connection with the audit of the accounts of the Authority shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any the offices of the Authority.
- (8) The accounts of the Authority as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

Annual Report.

- 20. (1) The Authority shall, after the end of each financial year, shall submit to the Central Government a report on their activities during the preceding financial year and containing such information relating to the proceedings and policy of the Authority, as the Government may prescribe from time to time.
- (2) The Central Government shall cause such report to be laid before each House of Parliament.

#### CHAPTER VI

### MISCELLANEOUS

Offence and Punishment. 21. A person who in contravention of the provisions of this Act, provides, distributes or receives any bro deasting service which is neither a licensed service nor a permitted service or abets or assists transmission of such service in any manner which may include collection of subscription for his principal, issuing of advertisements to such service, dealing in or distribution of decoders or dish antennas, shall be guilty of committing an offence of illegal broadcasting and on conviction, shall be punishable with imprisonment which may extend upto five years, or with fine which may extend upto rupees ten lakhs and in second and every subsequent offence such fine may extend to rupees fifty lakhs, or with both.

Special provision for certain foreign satellite broadcasting services.

- 22. Notwithstanding anything contained in this Act, the Authority, after receiving a request in this regard, may grant permission for reception of an unlicensed foreign satellite broadcasting service in India, if such a broadcasting service—
  - (i) is a free to air broadcasting service;
  - (ii) (a) does nto carry any advertisements; or
  - (b) carries advertisements, for such duration as may be fixed by the Authority, and the service is devoted solely to sports or International news and current affairs; and
    - (iii) fulfils the programme standard with respect to permitted service:

Provided that the Authority may revoke such permission, if it is of the opinion that the service has contravened any of the conditions referred to above.

23. (1) No licensee shall carry a live broadcast of any sporting or other event of national or international interest, held in India, as may be specified by the regulations, without the consent of the Authority unless the public service broadcasters have also been given the broadcasting right for carrying the same.

Prohibition of exclusive rights for live broadcasting of certain events.

(2) Any contract of exclusive broadcasting right of any event referred to in subsection (1) above without the consent of the Authority, shall be void and inoperative.

35 of 1908

24. (1) The Authority shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules, the Authority shall have powers to regulate its own procedure including the fixing of places and times of its enquiry.

Procedure and powers of Authority.

- (2) The Authority shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:—
  - (a) summoning and enforcing the attendance of any person and examining him on oath;
    - (b) requiring the discovery and production of documents;
    - (c) receiving evidence on affidavits;
    - (d) issuing commissions for the examination of witnesses or documents;
    - (e) any other matter which may be prescribed.
- 25. (I) In the event of war or a natural calamity of national magnitude, the Central Government may, in public interest, take over the control and management of any broadcasting service or any facility connected therewith, suspend its operation or entrust the public service broadcaster to manage it in the manner directed by the government for such period as it deems fit.

Powers of Central Government

- (2) The Central Government may if it appears necessary or expedient to do may, in public interest, at any time require the Authority to direct any licensee to—
  - (a) transmit in his broadcasting service such announcements in such a mannter as may be considered necessary;
  - (b) stop any broadcasting service which is considered prejudicial to friendly relations with a foreign country, public order, security of state, or communal harmony.
- (3) The Central Government may, in public interest, issue such other directions, to the Authority, from time to time as considered necessary.
- 26. (1) The licensee shall commence operation of his service within such period as may be specified by the Authority and maintain such documentary records and transmission schedules as may be specified by the regulations and allow inspections of the facilities and such documentary records and transmission schedules by any person authorised by the Authority.

Powers of Authority to seek information, conduct enquiries, take evidence, etc.

- (2) The Authority may call for any information from the licensee which is necessary for transparency and ascertaining the true ownership of the licensee.
- (3) The Authority may give directions to the licensee as it considers necessary in public interest.
- (4) The Authority or any officer authorised by the Authority shall have power to inspect and obtain information, wherever necessary, from programme producers, distributors and adverting agents.

5 of 1908

(5) For effective enforcement of restrictions on holding of licences, as provided under section 12, the Authority or any officer authorised by the Authority for that purpose, shall have all the powers of any inspecting officer as provided under Section 209-A of the Companies Act, 1956.

1 of 1956.

- (6) It shall be the duty of every licensee to carry out the directions of the Authority given under this section.
- (7) If default is made by a licensee in complying with the provisions of sub-section (6) the Authority may cancel the licence of the concerned person after providing him an opportunity of being heard.

Chairperson, members, etc., to be public servants. 27. Every Member, every officer or other employee of the Authority and every member of a Committee thereof, shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

45 of 1860.

Protection of action taken in good faith.

28. No suit or other legal proceeding shall lie against the Authority, any Member or officer or other employee thereof for anything which is in, good faith done or intended to be done in pursuance of this Act or of any rules or regulations made thereunder.

Delegation of Powers.

29. The Authority may by general or special order, delegate to the Chairperson or any other Member or to any officer of the Authority, subject to such conditions and limitations, if any, as may be specified therein, such of its powers and duties under this Act as it may deem fit.

Application of other laws not barred.

- 30, (1) The provisions of this Act shall be in addition to, and not in derogation wift the provisions of any other law for the time being in force.
- (2) Notwithstanding anything contained in sub-section (I), where any Act or ommission constitutes an offence punishable under this act and also under any other Act, then the offender found guilty of such offence, shall be punished under this act and not under the other Act.

Power to make rules.

- 31. (1) The Central Government may, by notification make rules for carrying out provisions of this Act.
- (2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—
  - (a) to provide other circumstances for private communication under sub-clause (iii) of clause (z) of section 2;
  - (b) the salaries and allowances payable and other conditions of service of the Chairperson under sub-section (10) of section 3;
  - (c) the allowances payable to the Part-time Members under sub-section (11) of section 3;
  - (d) the other functions to be performed by the Authority under clause (xi) of sub-section (1) of section 7;
    - (e) the other services under clause (g) of sub-section (1) of section 9;
  - (f) the number for the category of service more than which the licence cannot be given to a person under sub-section (2) of section 12;
  - (g) the number of licences to be granted by the Authority under sub-section (2) of section 14;
  - (h) the form in which and the time at which in each year the Authority shall prepare a budget under sub-section (4) of section 19;
  - (i) the form and the manner in which the annual statement of accounts shall be prepared under sub-section (5) of section 19;

- 2]
  - (j) the information relating to the proceedings and policy of the Authority to be contained in a report to be submitted by the Authority under sub-section (1) of section 20:
  - (k) any other matter regarding which the Authority shall have the powers of civil court under clause (e) of sub-section (2) of section 24;
    - (1) any other matter which is required to be, or may be prescribed.
- 32. (1) The Authority may, by notification, make regulations not inconsistent with this Act and the rules made thereunder for enabling it to perform its functions under this Act.

Power to make regulations.

- (2) Without prejudice to the generality of the foregoing power such regulations may provide for all or any of the following matters, namely:-
  - (a) the times and places at which meetings of the Authority shall be held and, the procedure to be followed thereat, and the procedure in regard to the transaction of the business at a meeting of the Authority under sub-section (1) of section 5;
  - (b) the manner of appointment of officers and other employees of the Authority under sub-section (3) of section 6;
  - (c) the salary and allowances payable to and other conditions of service of the officers and other employees of the Authority under sub-section (4) of section 6;
  - (1) the programme code and standards to be determined under clause (vi) of sub-section (1) of section 7;
  - (e) the reasonable quality of reception under clause (f) of sub-section (I) of section 7:
  - (f) the manner in which the licence fee shall be paid by the licensee under clause ((viii)) of sub-section (1) of section 10;
  - (g) the other conditions under clause (xi) of sub-section (1) of section 10, subject to which the licence shall be granted;
  - (h) the minimum number and type of terrestrial broadcasting service for every permitted service under sub-clause (a) of clause (i) of sub-section (2) of section 10;
  - (i) the minimum number and type of broadcasting services of the public service broadcaster under sub-clause (b) of clause (i) of sub-section (2) of section 10;
  - (i) the number of channels to be used by the licensee under clause (iii) of subsection (2) of section 10;
    - (k) the period of licence for each category under sub-section (1) of section 11;
  - (1) the form in which any person desirous of obtaining a satellite broadcasting licence shall apply to the Authority under sub-section (1) of section 13;
  - (m) the fee payable for grant of a licence to the applicant for satellite broadcasting service under sub-section (2) of section 13;
  - (n) the form of application and the particulars to be contained therein under the second proviso to clause (c) of sub-section (2) of section 13;
  - (o) the criteria subject to which the uplinking from outside the country may be permitted in respect of these services for coverage of live events taking place outside the country under first proviso to clause (iii) of sub-section (3) of section 15;
  - (p) the licence fee to be paid for grant of licences to the institutions under sub-section (2) of section 16;

- (q) the restricted area for which licence may be granted under second proviso to sub-section (2) of section 16;
- (r) any sporting or other event of national or international interest, of which a live broadcast shall not be carried out by the licence without the consent of the Authority under sub-section (1) of section 23;
- (s) the documentary record and transmission schedule to be maintained by the licence under sub-section (1) of section 26;
- (t) the conditions and fee of licence to be granted under sub-section (4) of section 35;
- (u) any other matter in respect of which provision is, in the opinion of the Authority, necessary for the performance of its functions under this Act.

Rules and regulations to be laid before Parliament.

33. Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in, the rule or regulation, or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

Power to remove difficulties. 34. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as it may deem necessary, for the removal of the difficulty:

Provided that no such order shall be made after the expiry of a period of three years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be, after it is made, before each House of Parliament.

Repeal and saving.

- 35. (1) The Cable Television Networks (Regulation) Act, 1995 is hereby repealed.
- 7 of 1995.
- (2) Notwithstanding such repeal any cable network registered under that Act may continue to provide cable services if the cable operator providing service has made an application to the Authority for the grant of a licence under this section within six months from the date of the commencement of this Act or where he has made such an application till the disposal of such application which ever is later.
- 7 of 1995.

(3) The Authority may, on receipt of an application under sub-section (2) grant or refuse to grant a licence for providing cable services:

Provided that no such licence shall be granted to any cable television network which provides such service to more than five thousand households and from more than one location:

Provided further that no application shall be refused under this sub-section unless the applicant has been given a reasonable opportunity of presenting his case.

- (4) A licence granted under this section shall be subject to such conditions and such licence fee as may be determined by the regulations.
- (5) Save as provided in this section no person shall provide any cable services after the commencement of this Act.
- (6) The Authority shall for regulating the cable network under this section authorise the concerned district magistrates or sub-divisional magistrate to receive public compliants,

SEC. 21

give notice to the operators, make such enquiries and take such evidence as considered necessary and forward the report to the Authority and on the basis of such report, if the Authority feels that there is sufficient reason to do so, it may take such action as it deems fit under sub-section (1) of section 18.

#### THE SCHEDULE

(See section 12)

#### RESTRICTIONS ON THE HOLDING OF LICENCES

#### PART I

Disqualification for Holding of Licences

The following persons shall be disqualified for the purposes of grant of licence under this Act.

- 1. General disqualification.
  - (a) An individual who is not an Indian national;
  - (b) A partnership firm all of whose partners are not citizens of India;
  - (c) Companies not incorporated in India;
  - (d) Companies incorporated India but with;
    - (i) foreign equity in case of terrestrial broadcast services;
  - (ii) foreign equity exceeding 49% in case of other services not mentioned in (i) above and management control not with the Indian shareholders.
    - (e) Governments and local authorities;

43 of 1951.

- (f) Any person convicated of an offence under this Act or convicted of the offences referred to in section 8 of the Representation of the People Act, 1951 or declared insolvent.
- (g) A body, which is controlled by a person, referred to in any of clauses (a) to (e) above.
- (h) A body corporate, in which a body referred to in clause (g) above, is a participant with more than a 5 percent interest.

Explanation.—"Foreign equity" for the purposes of this Part, shall be notified by the Central Government, from time to time.

- 2. Disqualification of religious bodies.
  - (a) a body objectives are wholly or mainly of a religious nature;
- (b) a body which is controlled by a body referred to in clause (a) or by two or more such bodies taken together.
  - (c) a body which controls a body referred to in clause (a);
- (d) a body corporate which is associate of a body corporate referred to in clause (a), (b) or (c);
- (e) a body corporate in which a body referred to in any of clauses (a) to (d) is a participant with more than five per cent interest;
  - (f) an individual who is an officer of a body referred to in clause (a); and
- (g) a body which is controlled by an individual referred to in clause (f) or by two or more such individuals taken together.

- 3. Disqualification of political bodies.
  - (a) a body whose objects are wholly or mainly of a political nature;
  - (b) a body affiliated to a body, referred to in clause (a);
  - (c) an individual who is an officer of a body, referred to in clause (a) or (b);
- (d) a body corporate, which is an associate of a body corporate referred to in clause (a) or (b);
- (e) a body corporate, in which a body referred to in any of clause (a) and (b) is a participant with more than a five per cent. interest;
- (f) a body which is controlled by a person referred to in any of clauses (a) to (d) or by two or more persons, taken together;
- (g) a body corporate, in which a body referred to in clause (f), other than one which is controlled by a person, referred to in clause (c) or by two to more such persons, taken together, is a participant with more than a five per cent. interest.
  - 4. Disqualification of publicly funded bodies.
- (a) a body (other than a local authority) which has in its last financial year received more than half its income from public funds;
- (b) a body which is controlled by a body referred to in clause (a) or by two or more such bodies taken together; and
- (c) a body corporate in which a body referred to in clause (a) or (b) is prticipant with more than a five per cent, interest.
- 5. Disqualification of advertising agencies.
  - (a) an advertising agency;
  - (b) an associate of an advertising agency;
- (c) any body which is controlled by a persons referred to in sub-clause (a) or by two more such persons taken together;
- (b) any body corporte in which a person referred to in any of sub-clauses (a) to
  (c) is a participant with more than a five per cent. interest.

#### PART II

# RESTRICTIONS TO PREVENT ACCUMULATION OF INTEREST IN LICENSED SERVICES

- 1. A person shall be allowed to hold licences in only one of the following category of services:—
  - (a) Terrestrial radio broadcasting;
  - (b) Terrestrial television broadcasting;
  - (c) Satellite television or radio broadcasting;
  - (d) Direct-to-home broadcasting;
  - (e) Local delivery services;
  - (f) Any other category or categories of service(s) which may be notified by the Central Government for the purpose.
- 2. Any restriction on participation imposed as above on the holder of a licence shall apply to him as if he and every person connected with him were one person.

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#### PART III

RESTRICTIONS ON CONTROLLING INTEREST IN BOTH NEWSPAPERS AND LICENSED SERVICES

- 1.1 No proprietor of a newspaper shall either be a participant with more than twenty per cent. interest in or control a body corporate which is the holder of a licence to provide a licensed service under this Act.
- 1.2 No proprietor of a newspaper, who is a participant with more than five but less than twenty per cent. interest, in a body corporate and not controlling such a body corporate, holding a licence shall be a participant with more than a five per cent. interest in any other such body corporate.
- 1.3 No person who is the holder of a licence to provide licensed service under this Act shall be either a participant with more than twenty per cent. interest in or control a body corporate which controls a newspaper.
- 1.4 No person who is the holder of a licence and is a participant with more than five but less than twenty per cent. interest in a body corporate and not controlling such a body corporate which runs a national newspapers, shall be participant with more than five per cent, interest in any other such body corporate.
  - 2. For the purposes of this part, a person controls a newspaper if—
    - (a) he is the proprietor of a such a newspaper; or
    - (b) he controls a body which is the proprietor of such a newspaper.
- 3. Any restriction on participation imposed as above on the proprietor of any newspaper or on the holder of licence shall apply to him as if he and every person connected with him were one person.

#### PART IV

1. (1) For the purposes of this Schedule,—

"Advertising Agency" means an individual or a body corporate who carries on business as an advertising agent (whether alone or in partnership) or has control over any body corporate which carries on business as an advertising agent, and any reference to an advertising agency includes a reference to an individual who—

- (a) is a director or officer of any body corporate which carries on such a business, or
  - (b) is employed by any person who carries on such a business;

"Associate" ---

- (a) in relation to a body corporate, means a director of that body corporate or a body corporate inter connected with that body corporate;
- (b) in relation to the partner of a firm, means a relative of such partner and includes any other partner of such firm;
- (c) in relation to the trustee of a trust, means any other trustee of such trust; and
- (d) in relation to an individual, shall be construed in accordance with subclause (3);
- (e) where a person or a body corporate is an associate of another person or body corporate, the latter shall also be deemed to be an associate of the former.

"Control"—

- (a) in relation to a body corporate, shall be construed in accordance with subclause (3), and
- (b) in relation to any body other than a body corporate, means the power of a person to secure, by virtue of the rules regulating that or any other body, that the affairs of the first-mentioned body are conducted in accordance with the wishes of that person,

and would include control as a result of, or by means of, trusts, agreements, arrangements, understandings and practices, whether or not having legal or equitable force and whether or not based on legal or equitable rights.

"Newspaper" means as defined under the Press and Registration of Books Act, 1867 (25 of 1867).

- (2) For the purpose of determining the persons who are an individual's associates for the purposes of this Schedule, the following persons shall be regarded as associates of each other, namely:—
  - (a) any individual and that individual's husband or wife and any relative, or husband or wife of a relative, of that individual or of that individual's husband or wife:
  - (b) any individual and any body corporate of which that individual is a director:
  - (c) any person in his capacity as trustee of a settlement and the settlor or grantor and any person associated with the settlor or grantor;
  - (d) persons carrying on business in partnership and the husband or wife and relatives of any of them;
  - (e) any two or more persons acting together to secure or exercise control of a body corporate or other association or to secure control of any enterprise or assets; and in this sub-paragraph "relative" means as defined under the Compaines Act, 1956.
  - (3) A person controls a body corporate if-
    - (a) he has a controlling interest in the body, or
  - (b) (although not having such an interest in the body) he is able, by virtue of the holding of shares or the possession of voting power in or in relation to the body or any other body corporate, to secure that the affairs of the body are conducted in accordance with his wishes, or
  - (c) he has the power, by virtue of any powers conferred by the articles of association or other document regulating the body or any other body corporate, to secure that the affairs of the body are so conducted,

and for this purpose, in the absence of proof to the contrary, a person has controlling interest in a body corporate if he holds, or is beneficially entitled to, more than twenty per cent. of the equity share capital in that body, or possesses more than twenty per cent. of the voting power in it.

- (4) It is hereby declared that a person may be regarded as controlling a body corporate by virtue of clause (b) of sub-clause (3) despite the fact that—
  - (a) he does not have a controlling interest in any such other body corporate as is mentioned in that paragraph, or
  - (b) any such other body corporate does not have a controlling interest in the body in question, or
  - (c) he and any such other body corporate together do not have a controlling interest in that body.

- (5) For the purposes of any provision of this Schedule which refers to a body controlled by two or more persons or bodies of any description taken together, the persons or bodies in question shall not be regarded as controlling the body by virtue of paragraph (b) of sub-paragraph (3) unless they are acting together in concert.
- (6) In this Schedule any reference to a participant with more than a five per cent. or, as the case may be, twenty per cent. interest in a body corporate is a reference to a person who—
  - (a) holds or is beneficially entitled to more than five or, as the case may be, twenty per cent, of the share in that body, or
  - (b) possesses more than five or as the case may be twenty per cent. of the voting power in that body,

and, where any such reference has been amended by an order under this Schedule varying the percentage in question, this sub-paragraphs shall have effect in relation to it subject to the necessary modifications.

- 2. (1) Any reference in paragraph 1 to a person—
- (a) holding or being entitled to shares, or any amount of the shares or equity share capital, in a body corporate, or
- (b) possessing voting power, or any amount of the voting power, in a body corporate,

is a reference to his doing so, or being so entitled, whether alone or jointly with one or more other persons and whether directly or through one or more nominees.

- (2) "Inter connected Undertakings or Corporate Bodies" shall have the same meaning as assigned in the Monopolies and Restrictive Trade practices Act, 1969 (54 of 1969).
- 3. For the purposes of this Schedule, the following persons are connected with each other in relation to a particular licence, namely:—
  - (a) the licence holder;
  - (b) a person who controls the licence holder;
  - (c) an associate of the licence holder or of a person referred to in clause (b); and
  - (d) a body which is controlled by the licence holder or by an associate of the licence holder.

#### STATEMENT OF OBJECTS AND REASONS

The broadcasting scenario, especially in the realm of statellite broadcasting, has undergone a revolution during the last few years. A large number of satellite television channels have been beaming their programmes through the Indian skies to our people. All these channels are foreign entities and their programmes are uplinked from outside the country without any regulation through the law of our land, while Indian entrepreneurs and Indian companies are not at present permitted to own either Radio or Television stations.

- 2. Concern has been voiced both inside Parliament and outside about the implications of these unregulated television programmes and the denial of level playing field to Indian entities. The only legal instrument available is the Indian Telegraph Act, 1885, which is considered totally inadequate to govern modern broadcasting media. All leading democratic countries have enacted laws specifically regulating broadcasting media. The introduction of the Broadcasting Bill is a step in this direction.
- 3. It is felt that the public service broadcaster alone will not be able to meet the needs and urges of the people in terms of variety and plurality of programmes required in different regions by different sections of society in our vast country. Keeping in view our great democratic traditions, it is imperative that our citizens are well informed and given wider choice in matters of information, education and entertainment. This can be provided by facilitating private broadcasting in the country.
- 4. The Bill seeks to establish an autonomous Broadcasting Authority for the purposes of facilitating and regulating broadcasting services in India so that they become competitive in terms of quality of services, cost of service and use of new technologies, apart from becoming a catalyst for social change, promotion of values of Indian culture and shaping of a modern vision. It will also curb monopolistic trends in this sensitive field, so that people are provided with a wide range of news and view.

The Bill seeks to achieve the said objectives.

NEW DELHI;

S. JAIPAL REDDY.

The 12th May, 1997.

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#### NOTES ON CLAUSES

Clause 2 defines the various expressions occurring in the Bill.

Clause 3 provides for the establishment of the Broadcasting Authority of India.

Clause 4 provides that the President may on the grounds provided under article 317 of the Constitution may remove or suspend the Chairperson and Members.

Clause 5 provides detailed provisions regarding the conduct of the meeting of the Authority.

Clause 6 provides procedure for appointment of Secretary-General of Authority and empowers the Authority to appoint other officers.

Clause 7 provides functions of the Authority and empowers the Authority to appoint committees of experts to advise on matters considered necessary.

Clause 8 provides prohibition on broadcasting serivce without lincese by any person.

Clause 9 specifies the different services for which licences may be granted by the Authority.

Clause 10 specifies the conditions for granting lincences for broadcasting services licences.

Clause 11 provides for the period of broadcasting lincence and other conditions.

Clause 12 specifies the eligibility and restrictions for licences to be granted by the Authority.

Clause 13 gives procedure for grant of licence for statellite broadcasting services.

Clause 14 provides procedure for grant of licence for Direct-to-Home services.

Clause 15 provides for special provisions for satellite broadcasting and Direct-to-Home services.

Clause 16 provides procedure for grant of licence for terrestrial broadcasting services.

Clause 17 provides procedure for grant of licence for local delivery services by the Authority.

Clause 18 gives the details of actions which can be taken by the Authority for enforcement of licences.

Clause 19 provides that licence fee shall be credited to the Consolidated Fund of India and also specifies the maintenance of the accounts, budget and audit by the Comptroller-Auditor-General of Indai by the Authority.

Clause 20 provides for furnishing of the Annual report to the Central Government which shall be laid before the Parliament.

Clause 21 prescribes offence and punishment.

Clause 22 provides special provisions for certain foreign satellite broadcasting services.

Clause 23 empowers the Authority to refuse licence for live broadcasting of certain events of national and international importance.

Clause 24 enumerates the procedure and powers of the Authority.

Clause 25 specifies the powers of the Central Government in event of war or natural calamities.

Clause 26 provides powers of the Authority to seek information, conduct enquiries, take evidence, for operation and regulation licences and also empowers the Authority to give directions to licences.

Clause 27 provides that Chairperson and Members of the Authority shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Clause 28 provides for usual provisions relating to the protection of action taken in good faith by the Authority or Chairperson or Members or officers and other employees of the Authority.

Clause 29 provides for delegation of powers of the Authority to Chairperson or other Member or other officers.

Clause 30 provides that application of other laws are not barred and in case of an offence committed under this Act and also under another Act, the offender shall be punished under this Act.

Clause 31 confers on the Central Government powers to make rules for carrying out the provisions of the Bill.

Clause 32 confers on the Authority the powers to make regulation consistent with provision of this Bill and rules made by the Central Government thereunder before each House of Parliament.

Clause 33 provides laying of the rules and regulations before Parliament.

Clause 34 empowers the Central Government to remove difficulties which may arise in giving effect to the provisions of the Bill.

Clause 35 provides for repeal of the Cable Television Networks (Regulation) Act, 1995 and for licensing and regulations of cable networks registered under that Act on the date of commencement of this Act.

## FINANCIAL MEMORANDUM

The Central Government proposes to set up an independent statutory Broadcast Authority under clause 3 of the Bill. Recurring expenditure towards pay and allowances, etc., of the Chairperson and other members under sub-clauses (10) and (11) of clause 3 will be of the order of Rs. 30 lakhs per annum and of the officers and employees of the Authority under sub-clause (4) of clause 6 will be of the order of rupees 2 crores per annum. Non-recurring expenditure by way of purchase of accommodation, furniture and fixtures, office equipment, vehicle etc., will be approximately of the order of rupees 10 crores.

# MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 31 of the Bill empowers the Central Government to make rules to provide, inter alia, for the salary and allowances payable to and other conditions of service of the Chairperson and the other members, the additional powers and functions that may be performed by the Authority, the form of annual statement of accounts to be prepared by the Authority, the forms and manner in which the returns and statements and particulars to be prepared and to be furnished by the Central Government and any other matter which is to be, or may be, prescribed, or in respect of which provision is to be or may be made by rules.

- 2. Clause 32 of the Bill empowers the Authority to make regulation to provide for inter alia, the time and places of meeting of the Authority and the procedure to be followed at such meetings including the quorum necessary for the transaction of the business, and the terms and others conditions of service of officers and employees of the Authority.
- 3. The rules and regulations made shall be laid, as soon as may be after they are made, before each House of the Parliament.
- 4. The matter in respect of which rules and regulations may be made are generally matters of procedure and administrative details and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, normal in character.

# THE SICK INDUSTRIAL COMPANIES (SPECIAL PROVISIONS) BILL, 1997

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SCHEDULE I.

SCHEDULE II.

A Bill to make, in the public interest, special provisions with a view to securing the timely detection of sick companies owning industrial undertakings, the speedy determination of the remedial and other measures which need to be taken with respect to such companies and the expeditious enforcement of the measures so determined and for matters connected therewith or incidental thereto and also to repeal the Sick Industrial Companies (Special Provisions) Act, 1985.

BE it enacted by Parliament in the Forty-eighth Year of the Republic of India as follows:—

# **CHAPTER I**

# PRELIMINARY

1. (1) This Act may be called the Sick Industrial Companies (Special Provisions) Act, 1997.

Short title, extent, commencement and application.

- (2) It extends to the whole of India.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for

different provisions of this Act and any reference in any provision of this Act of the commencement of this Act shall be construed as a reference to the commencement of that provision.

- (4) It shall apply, in the first instance, to all the scheduled industries other than the scheduled industry relating to ships and other vessels drawn by power.
- (5) The Central Government may, by notification, apply the provisions of this Act, on and from such date as may be notified in the Official Gazette, to the scheduled industry relating to ships and other vessels drawn by power.

Declaration.

2. It is hereby declared that this Act is for giving effect to the policy of the State towards securing the principles specified in clauses (b) and (c) of article 39 of the Constitution.

Definitions.

- 3. In this Act, unless the context otherwise requires,-
  - (a) "appointed day" means the date on which the Board is established;
- (b) "Board" means the Board for Industrial and Financial Reconstruction established under section 4;
  - (c) "Chairperson" means the Chairperson of the Board;
- (d) "company" means a company as defined in section 3 of the Companies Act, 1956;

I of 1956.

- (e) "date of finalisation of the duly audited accounts" means the date on which the audited accounts of the company are adopted at the annual general meeting of the company;
- (f) "industrial company" means a company which owns one or more industrial undertakings;
- (g) "industrial undertaking" means any undertaking pertaining to a scheduled industry carried on in one or more factories by any company but does not include—
  - (i) an ancillary Industrial undertaking as defined in clause (aa) of section 3 of the industries (Development and Regulation) Act, 1951; and

65 of 1951.

- (ii) a small scale industrial undertaking as defined in clause (j) of the aforesaid section 3;
- (h) "Member" means a Member of the Board and includes the Chairperson thereof;
- (i) "net worth" means the sum total of the paid-up capital and free reserves.

Explanation. For the purposes of this clause, "free reserves" means all reserves credited out of the profits and share premium account but does not include reserves credited out of revaluation of assets, write back of depreciation provisions and amalgamation;

- (j) "notification" means a notification published in the Official Gazette;
- (k) "prescribed" means prescribed by rules made under this Act;
- (I) "Reserve Bank" means the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934;

2 of 1934.

- (m) "Schedule" means the Schedules annexed to, this Act;
- (n) "scheduled bank" means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934;

2 of 1934.

(o) "scheduled industry" means any of the industries specified for the time being in the First Schedule to the Industries (Development and Regulation) Act, 1951;

65 of 1951.

- (p) "sick industrial company" means an industrial company (being a company registered for not less than five years) which has—
  - (i) defaulted in payment or repayment, on due dates, of interest or principal or any other amount or any combination thereof to any secured creditor, or
  - (ii) been irregular on any cash credit, working capital or like account (by whatever name called) to any scheduled bank or any other secured creditor,

in any four or more quarters, whether continuous or not, in a block of two successive financial years;

- (a) "specified" means specified by regulations made by the Board;
- (r) "State level institution" means any of the following institutions, namely:—
- (1) State Financial Corporations established under section 3 or section 3A and institutions notified under section 46 of the State Financial Corporations Act. 1951:
- (ii) State Industrial Development Corporations registered under the Companies Act, 1956;
- (iii) such other institutions, being companies and not being public financial institutions, engaged in the development or financing of industrial undertakings, as the Central Government may, notify in the Official Gazette:

Provided that no institution shall be so notified unless not less than fifty-one per cent. of the paid-up share capital thereof is held by any State Government or Governments or by any institution or institutions mentioned in sub-clauses (i) and (ii) or partly by one or more public financial institutions or institutions mentioned in sub-clauses (i) and (ii) and partly by one or more State Governments.

(2) (a) Words and expressions used and not defined in this Act shall have the meanings, if any, respectively assigned to them in the Companies Act, 1956;

(b) Words and expressions used but not defined in this Act or in the Companies Act, 1956, shall have the meanings, if any, respectively assigned to them in the Industries (Development and Regulation) Act, 1951.

(3) Any reference in this Act to any other enactment or any provision thereof, shall, in relation to an area in which such enactment or such provision is not in force, be construed as a reference to the corresponding law or the relevant provision of the corresponding law, if any, in force in that area.

#### CHAPTER II

#### BOARD FOR INDUSTRIAL AND FINANCIAL RECONSTRUCTION

4. (1) With effect from such date as the Central Government may, by notification, appoint, there shall be established a Board to be known as the Board for Industrial and Financial Reconstruction to exercise the jurisdiction and powers and discharge the functions and duties conferred or imposed on the Board by or under this Act.

Establishment of Board.

- (2) The Beard shall consist of a Chairperson and not less than two and not more than fourteen other Members, to be appointed by the Central Government.
- (3) The Chairperson and other Members of the Board shall be the persons who are or have been or are qualified to be High Court Judges, or persons of ability, integrity and standing who have special knowledge of, and professional experience of, not less than fifteen years in science, technology, economics, banking industry, law, labour matters, industrial finance, industrial management, industrial reconstruction, administration, investment, accountancy, marketing or any other matter or the special knowledge of, or professional experience in which, would in the opinion of the Central Government, be useful to the Board:

63 of 1951.

I of 1956.

l of 1956.

1 of 1956. 65 of 1951. Provided that while appointing any Member the Central Government shall as far as practicable ensure that at any given point of time not more than one-fourth of the total number of Members belong to the same discipline.

Term of office, conditions of service, etc., of Chairperson and other members.

- 5. (1) Before appointing any person as the Chairperson or other Member, the Central Government shall satisfy itself that the person does not and will not, have any such financial or other interest as is likely to affect prejudicially his functions as such Member.
- (2) The Chairperson and every other Member shall hold office for a term of three years from the date on which he enters upon his office or until he attains the age of sixty-two years, whichever is earlier.
  - (3) Notwithstanding anything contained in sub-section (1), a Member may—
    - (a) by writing under his hand and addressed to the Central Government resign his office at any time;
    - (b) be removed from his office in accordance with the provisions of section 6.
- (4) A vacancy caused by the resignation or removal of the Chairperson or any other Member under sub-section (3) or otherwise shall be filled by fresh appointment.
- (5) In the event of the occurrence of a vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the senior most Member shall act as the Chairperson till the date on which a new Chairperson, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.
- (6) When the Chairperson is unable to discharge his functions owing to absence, illness or any other cause, the senior most Member shall discharge the functions of Chairperson, till the date on which the Chairperson resumes his duties.
- (7) The salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson and other Members shall be such as may be prescribed:

Provided that neither the salary and allowances nor the other terms and conditions of service of Chairperson or any other Members shall be varied to his disadvantage after his appointment.

- (8) The Chairperson and every other Member shall be entering upon his office, make a declaration of fidelity and secrecy in the form set out in Schedule I.
- (9) The Chairperson or any other Member ceasing to hold office as such shall not hold any appointment or be connected with the management or administration in any company in relation to which any matter has been the subject-matter of consideration before the Board, for a period of five years from the date on which he ceased to hold such office.

Removal of Members from office in certain circumstances.

- 6. (1) The Central Government may remove from office any Member, who-
  - (a) has been adjudged an insolvent, or
- (b) has been convicted of an offence, which, in the opinion of the Central Government, involves moral turpitude, or
  - (c) has become physically or mentally incapable of acting as a Member, or
- (d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Member, or
- (e) has so abused his position as to render his continuance in office prejudicial to the public interest.

- (2) Notwithstanding anything contained in sub-section (1), no Member shall be removed from his office on the ground specified in clause (d) or clause (e) of that sub-section under the Supreme Court on a reference being made to it in this behalf by the Central Government, has on an enquiry held by it in accordance with such procedure as it may specify in this behalf, reported that the Member ought, on such grounds, to be removed.
- 7. (1) The Central Government shall appoint a Secretary to the Board to exercise and perform, under the control of the Chairperson, such powers and duties as may be prescribed or as may be specified.
- (2) The Central Government may provide the Board with such other officers and employees as may be necessary for the efficient performance of the functions of the Board.

(3) The salaries and allowances payable to and the conditions of service of the Secretary and other officers and employees of the Board shall be such as may be prescribed:

Provided that such Secretary, officer or other employees shall, before entering upon his duties, make a declaration of fidelity and secrecy in the form set out in Schedule I.

- 8. The salaries and a. wances payable to the Members and the administrative expenses including salaries, allowances and pension to or in respect of the officers and other employees of the Board shall be defrayed out of the Consolidated Fund of India.
- 9. No act or proceeding of the Board shall be questioned on the ground merely of the existence of any vacancy or defect in the constitution of the Board or any defect in the appointment of a person acting as a Member of the Board.
- 10. The Chairperson and other Members and the officers and other employees of the Board shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.
- 11. (1) Subject to the provisions of this Act, the Board shall have powers to regulate the procedure and conduct of the business.
- (2) The Board shall while dealing with a reference under Chapter III conduct its proceedings through facilitation, mediation or issue of directions in order to formulate a viable restructuring scheme under sections 15, 16 or 17, as the case may be.
- (3) In particular and without prejudice to the generality of the foregoing provisions, the powers of the Board, shall include the power to determine the extent to which persons interested or claiming to be interested in the subject-matter of any proceeding before it may be allowed to be present or to be heard, either by themselves or by their representatives or to take part in the proceedings.
  - (4) The Board may for the purposes of discharging its functions under this Act—
    - (a) require the attendance of any witness and examine him on oath;
    - (b) direct the production of any document or other material object as evidence;
    - (c) receive any statement or evidence on affidavit;
    - (d) requisition a duly certified copy of any public record from any Court or office.
- (5) The Board, while conducting its proceedings under this Act, shall not act like a civil court.

# CHAPTER III

# REFERENCES AND SCHEMES

- 12. (1) Where an industrial company has become a sick industrial company, the Board of Directors of the company may at their discretion, made a reference to the Board for determination of the measures which shall be adopted with respect to the company.
- (2) Notwithstanding anything contained in sub-section (1), if the accumulated losses of any sick industrial company as at the end of any financial year (hereinafter referred to as the relevant financial year) have resulted in erosion of fifty per cent. or more of its peak net worth during the immediately preceding four financial years, the Board of Directors of the company shall within a period of sixty days from the date of finalisation of the duly audited accounts of the company for the relevant financial year make a reference to the Board for determination of the measures which shall be adopted with respect to the company.

Secretary, officers and other employees of Board

Salaries, etc., be defrayed out of the Consolidated Fund of India.

Vacancies, etc., not to invalidate proceedings of the Board.

Members and staff of the Board to be public servants.

Procedure to be adopted by Board.

Reference to Board.

45 of 1860.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), the Central Government or a State Government or a public financial institution or a State level institution or a scheduled bank, may, if it has sufficient reasons to believe that any industrial company has become, for the purposes of this Act, a sick industrial company, make a reference in respect of such company to the Board for determination of the measures which shall be adopted with respect to such company:

Provided that a reference shall not be made under this sub-section in respect of any company by----

- (a) the Central Government or any State Government unless such company is a Government company in the Central sector or in the State sector, as the case may be:
- (b) a public financial institution or a State level institution or a scheduled bank unless it has, by reason of any financial assistance or obligation rendered by it, or undertaken by it, with respect to, such company, an interest in such company.

Reference to be accompanied by a certificate.

- 13. (1) No reference under section 12 shall be entertained by the Board, unless it is accompanied by a certificate issued by a public financial institution or a State level institution or a scheduled bank to the effect that such industrial company has become a sick industrial company in accordance with the provisions of this Act.
  - (2) The certificate under sub-section (1) shall be in such form as may be specified.
- (3) A certificate issued under sub-section (1) shall be conclusive proof that the industrial company is a sick industrial company for the purposes of this Act.

Special directors.

- 14. (1) Upon receipt of reference under section 12, the Board shall appoint one or more persons to be a special director or special directors of the sick industrial company for safeguarding the financial and other interests of the company, or in the public interest.
- (2) The special director or special directors, as the case may be, shall be appointed from amongst persons possessing special knowledge or professional experience which would in the opinion of the Board be useful to the sick industrial company.
- (3) The Board may issue such directions to a special director appointed under subsection (1) as it may deem necessary or expedient for the proper discharge of his duties.
- (4) The appointment of a special director or special directors referred to in subsection (1) shall be valid and effective notwithstanding anything to the contrary contained in the Companies Act, 1956 or in any other law for the time being in force or in the memorandum and articles of association or any other instrument relating to the industrial company, and any provision regarding share qualification, age limit, number of directorships, removal from office of director and such like conditions contained in any such law or instrument aforesaid, shall not apply to any special director appointed by the Board.

1 of 1956.

- (5) Any special director appointed under sub-section (1) shall—
- (a) hold office during the pleasure of the Board and may be removed or substituted by any other person, by order in writing by the Board;
- (b) not incur any obligation or liability by reason only of his being a director or for anything done or omitted to be done in good faith in the discharge of his duties as a director or anything in relation thereto;
- (c) not be liable to retirement by rotation and shall not be taken into account for computing the number of directors liable to such retirement;
- (d) not be liable to be prosecuted under any law for anything done or omitted to be done in good faith in the discharge of his duties in relation to the sick industrial company.

15. (1) Upon receipt of a reference, the Board shall within a period of fifteen days by order direct the sick industrial company to attempt formulation of a viable restructuring scheme in consultation with all such parties from whom any financial assistance by way of loans, advances or guarantees or reliefs or concessions or sacrifices are required under the scheme.

Preparation of schemes by sick industrial company.

- (2) The Board may provide such guidelines as it may think fit for the purposes of formulating a scheme under sub-section (1).
- (3) The special director or special directors, as the case may be, appointed under section 14 shall facilitate negotiations between the sick industrial company and the parties referred to in sub-section (1).
- (4) The sick industrial company shall, within the period specified, formulate and submit a scheme to the Board.
- (5) If the sick industrial company and the parties referred to in sub-section (1) agree upon a scheme, the Board shall by order sanction the scheme.
- 16. (/) If the sick industrial company fails to submit a scheme under section 15, the Board shall mediate and attempt to formulate a viable restructuring scheme in consultation with the sick industrial company and all such parties from whom any financial assistance by way of loans, advances or guarantees or reliefs or concessions or sacrifices are required under the scheme.

Mediation by Board.

- (2) The Board may, while acting as a mediator under sub-section (1), obtain the assistance of expertise from any public financial institution or a State level institution or a scheduled bank or any other person.
  - (3) The Board shall, within the period specified, formulate the scheme.
- (4) If all the parties referred to in sub-section (1) agree upon a scheme formulated under the mediation of the Board, the Board shall by order, sanction the scheme.
- 17. (/) If no scheme is sanctioned under section 15 or 16, the Board shall direct the secured creditors of the sick industrial company to formulate a viable restructuring scheme after consulting the sick industrial company and all such parties from whom any financial assistance by way of loans, advances or guarantees or reliefs or concessions or sacrifices are required under the scheme.

Secured creditors to propero scheme.

- (2) The Board may provide such guidelines as it may think fit for the purposes of formulating the scheme under sub-section (1).
- (3) The secured creditors shall, within the period specified, formulate and submit the scheme to the Board.
  - (4) The Board shall by order sanction the scheme submitted under sub-section (3):

Provided that no such scheme shall be sanctioned unless it has the approval of the secured creditors representing not less than seventy-five per cent. of the monetary value of secured debt.

18. (1) If no scheme is sanctioned under section 15, 16 or 17, the Board shall cause the sick industrial company or part or whole of any industrial undertaking of the sick industrial company to be sold as a going concern.

Sale of sick industrial company as a going concern.

- (2) For effecting the sale under sub-section (1), the Board shall follow such procedure as may be specified.
- (3) The Board shall, within the period specified, complete the process of sale under sub-section (1).

Recourse to different measures.

19. The scheme formulated under section 15, 16 or 17, may provide for any one or more measures outlined in Schedule II.

Preference to professional management groups. 20. Where a scheme under section 15, 16 or 17 involves any change in or takeover of the management of the sick industrial company, other things being equal, professional management groups or cooperative society formed by the employees of the sick industrial company shall be preferred.

Distribution of sale proceeds.

21. Where the whole of the undertaking of the sick industrial company is sold under a scheme sanctioned by the Board under section 15, 16 or 17, or under section 18, the Board may distribute the sale proceeds to the parties entitled thereto in accordance with the provisions of section 529A and other provisions of the Companies Act, 1956.

1 of 1956.

Transfer of property or liability of sick industrial company.

22. Where a scheme sanctioned by the Board under section 15, 16 or 17 provides for the transfer of any property or liability of the sick industrial company in favour of any other company or person or where such scheme provides for the transfer of any property or liability of any other company or person in favour of the sick industrial company, then, by virtue of, and to the extent provided in, the scheme on and from the date of coming into operation of the scheme or any provision thereof, the property shall be transferred to and vest in, and the liability shall become the liability of such other company or person or, as the case may be, the sick industrial company.

Shareholders approval for amalgamation. 23. Where a scheme under section 15, 16 or 17 relates to amalgamation, the said scheme shall be laid before the company other than the sick industrial company in the general meeting for the approval of the scheme by its shareholders and no such scheme shall be proceeded with unless it has been approved, with or without modification, by a special resolution passed by the shareholders of the transferee industrial company.

Scheme sanctioned by the Board to be binding on all parties.

- 24. (1) On and from the date of the coming into operation of a scheme sanctioned by the Board under section 15, 16 or 17, or any provision thereof, or a sale effected by the Board under section 18, the scheme or such provision or such sale shall be binding on the sick industrial company and the transferee company, or as the case may be, any other company amalgamating with the sick industrial company and also on the shareholders, creditors and guarantors, employees of the said companies and such purchaser.
- (2) The sanction accorded to a scheme by the Board under section 15, 16 or 17, or a sale effected under section 18 shall be conclusive evidence that all the requirements of the scheme relating to the reconstruction or amalgamation, or any other measure outlined therein have been complied with and a copy of such scheme certified in writing by an officer of the Board to be a true copy thereof, shall, in all legal proceedings be admitted as evidence.
- (3) If any difficulty arises in giving effect to the provisions of a scheme sanctioned under section 15, 16 or 17, or a sale effected under section 18 the Board may, by order, do any act, deed or thing, not inconsistent with such provisions, which appears to it to be necessary or expedient for the purpose of removing the difficulty.

Monitoring of schemes. 25. The Board shall monitor periodically the implementation of a scheme sanctioned by it under section 15, 16 or 17.

Winding up of sick industrial company.

- 26. (1) Where no scheme is sanctioned under section 15, 16 or 17, or the sale under section 18 does not materialise and the Board after consideration of all the relevant facts and circumstances and after giving an opportunity of being heard to all concerned parties, is of the opinion that it is just and equitable that the company should be wound up, it may record and forward its opinion to the concerned High Court.
- (2) The High Court shall, on the basis of the opinion of the Board, order winding up of the sick industrial company and may proceed and cause to proceed with the winding up of the sick industrial company in accordance with the provisions of the Companies Act, 1956.

I of 1956.

(3) Notwithstanding anything contained in sub-section (2), the Board may cause to be sold the assets of the sick industrial company in such manner as it may deem fit and forward the sale proceeds to the High Court for orders for distribution in accordance with the provisions of section 529A, and other provisions of the Companies Act, 1956.

27. Where, for the proper discharge of the functions of the Board under this Act, the circumstances so require, the Board may through a public financial institution or a State level institution or any scheduled bank or any other person cause to be prepared,—

Preparation of inventory, etc.

- (a) with respect to a company, a complete inventory of-
  - (i) all assets and liabilities of whatever nature;
- (ii) all books of account, registers, maps, plans, records, documents of title or ownership of property and all other documents of whatever nature relating thereto;
- (b) a list of shareholders and a list of creditors showing separately in the list of creditors, the secured creditors and the unsecured creditors;
- (c) a valuation report in respect of the shares and assets in order to arrive at the reserve price for the sale of a part of whole of the industrial undertaking of the company or for fixation of the lease rent or share exchange ratio;
  - (d) an estimate of reserve price, lease rent or share exchange ratio; and
  - (e) proforma accounts, where no up-to-date audited accounts, are available.
- 28. (1) Where in respect of a sick industrial company, any scheme referred to in section 15, 16 or 17, is under preparation or consideration or a scheme sanctioned by the Board under the said sections is under implementation or the sale under section 18 is in process, then notwithstanding anything contained in the Companies Act, 1956 or any other law or in the memorandum and articles of association of such company or any other instrument having effect under the said Act or other law, the Board may on an application made by such company and after giving an opportunity of being heard to such parties as it deems fit and for reasons to be recorded in writing declare—

Suspension of legal proceedings, contracts,

- (i) that all or any proceedings for the winding up of the sick industrial company or suit or other proceedings for recovery of money or enforcement of any security against such company or of any guarantee in respect of any loans or advances granted to such company or for execution, distress or like against any of the properties of such company or for appointment of a receiver in respect thereof shall be suspended for such period as it deems fit and upon such declaration all such suits or proceedings shall be suspended accordingly;
- (ii) that all or any of the contracts, assurances of property, agreements, settlements, awards, standing orders or other instruments in force, to which such sick industrial company is a party or which may be applicable to such sick industrial company immediately before the date of such order, shall remain suspended or that all or any of the rights, privileges, obligations and liabilities accruing or arising thereunder before the said date, shall remain suspended for such period as it deems fit, or shall be enforceable with such adaptations and in such manner as may be directed by the Board and upon such declaration such contracts, assurances of property, agreements, settlements, awards, standing orders or other instruments in force shall be suspended for such period or shall be enforced with such adaptations and in such manner, as the case may be.
- (2) Where the management of the sick industrial company is taken over or changed in pursuance of any scheme sanctioned under section 15, 16 or 17 or as a result of sale under section 18, then, notwithstanding anything contained in the Companies Act, 1956 or any other law or in the memorandum and articles of association of such company or any instrument having effect under the said Act or other law—

1 of 1956.

1 of 1956.

1 of 1956.

- (a) it shall not be lawful for the shareholders of such company or any other person to nominate or appoint any person to be a director of the company;
- (b) no resolution passed at any meeting of the shareholders of such company shall be given effect to unless approved by the Board.
- (3) Any declaration made under sub-section (1) with respect to a sick industrial company shall have effect notwithstanding anything contained in the Companies Act, 1956 or any other law, or in the memorandum and articles of association of such company or any instrument having effect under the said Act or other law or any agreement or any decree or order of a court, tribunal, officer or other authority or of any submission, settlement or standing order and accordingly:—

1 of 1956.

- (a) any remedy for the enforcement of any right, privilege, obligation and liability suspended or modified by such declaration and all proceedings relating thereto pending before any court, tribunal, officer or other authority shall remain stayed or be continued subject to such declaration; and
  - (b) on the declaration ceasing to have effect—
  - (i) any right, privilege, obligation or liability so remaining suspended or modified shall become revived and enforceable as if the declaration had never been made; and
  - (ii) any proceeding so remaining stayed shall be proceeded with, subject to the provisions of any law which may then be in force, from the stage which had been reached when the proceedings become stayed.
- (4) In computing the period of limitation for the enforcement of any right, privilege, obligation or liability, the period during which it or the remedy for the enforcement thereof remains suspended under this section shall be excluded.

Direction not to dispose of assets.

- 29. The Board may, if it is of the opinion that any direction is necessary in the interest of the sick industrial company or creditors or shareholders or in the public interest, by order in writing, direct the sick industrial company not to dispose of, except with the consent of the Board, any of its assets—
  - (a) during the pendency of the reference or the period of preparation or consideration of the scheme under section 15, 16 or 17;
    - (b) during the period, the sale under section 18 is in process; or
  - (c) during the period beginning with the recording of opinion by the Board for winding up of the company under sub-section (1) of section 26 and up to commencement of the proceeding relating to the winding up before the concerned High Court.

#### CHAPTER IV

## MISCELLANGOUS

Protection of action takes in good faith.

30. No suit or other legal proceeding shall lie against the Board or the Chairperson or any other Member, officer or other employee of the Board, or any public financial institution or State level institution or scheduled bank or any other person authorised by the Board to discharge any function under this Act for any loss or damage caused or likely to be caused by any action which is in good faith done or intended to be done in pursuance of this Act.

Missionence proceedings. 31. (1) If, in the course of scrutiny or implementation of any scheme or proposal, it appears to the Board that any person who has taken part in the promotion, formation or management of the sick industrial company or its undertaking, including any past or present director, manager or officer or employee of the sick industrial company.—

- (a) has misapplied or retained, or become liable or accountable for, any money or property of the sick industrial company; or
- (b) has been guilty of any misfeasance, malfeasance or non-feasance or breach of trust in relation to the sick industrial company,

the Board may, by order, direct him to repay or restore the money or property or any part thereof, with or without interest, as it thinks just, or to contribute such sum to the assets of the sick industrial company or the other person entitled thereto by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust, as the Board thinks just and also report the matter to the Central Government for any other action which that Government may deem fit.

- (2) If the Board is satisfied on the basis of information and evidence in its possession with respect to any person who is or was a director or an officer or other employee of the sick industrial company, that such person by himself or along with others had diverted the funds or other property of such company for any purpose other than a bona fide purpose of the company or had managed the affairs of the company in a manner highly detrimental to the interest of the company, the Board shall, by order direct the public financial institutions, scheduled banks and State level institutions not to provide, during a period of ten years from the date of the order, any financial assistance to such person or any firm of which such person is a partner or any company or other body corporate of which such person is a director (by whatever name called).
- (3) No order shall be made by the Board under this section against any person unless such person has been given an opportunity for making his submissions.
- (4) This section shall apply notwithstanding that the matter is one for which the person may be criminally liable.
- 32. No order passed or scheme sanctioned or a sale effected under this Act shall be appealable and no civil court shall have jurisdiction in respect of any matter which the Board is empowered by, or under, this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Bar of jurisdiction.

33. The Board may, by general or special order, delegate, subject to such conditions and limitations, if any, as may be stated in the order, to any Member or Members, as the case may be or Secretary or other officer or employee of the Board such powers and duties except the power to make regulations under section 41, as it may deem necessary.

Delegation of powers.

34. (1) The Board shall furnish from time to time to the Central Government such returns as the Central Government may require.

Returns and information.

- (2) The Board may, for the purpose of efficient discharge of its functions under this Act, collect from, or furnish to,—
  - (a) the Central Government,
  - (b) the Reserve Bank,
  - (c) any scheduled bank or any other bank,
  - (d) any public financial institution,
  - (e) any State-level institution,
  - (f) the sick industrial company and in case of amalgamation, the other company,

such information as it may consider useful for the purpose in such manner and within such time as it may think fit.

Power to seek
the assistance
of Chief
Metropolitan
Magistrate or
District
Magistrate,

- 35. (1) The Board or any person, on being directed by the Board, may, in order to take into custody or under its control all property, effects and actionable claims to which a sick industrial company is or appears to be entitled, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any property, books of account or any other documents of such sick industrial company be situate or be found, to take possession thereof, and the Chief Metropolitan Magistrate or the District Magistrate, as the case may be, shall on such request being made to him,—
  - (i) take possession of such property, books of account or other documents; and
  - (ii) cause the same to be entrusted to the Board or the person authorised by the Board.
- (2) For the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use or cause to be used such force as may, in his opinion, be necessary.
- (3) No act of the Chief Metropolitan Magistrate or the District Magistrate done in pursuance of this section shall be called in question in any Court or before any authority on any ground whatsoever.

Effect of the Act on other laws.

36. (1) The provisions of this Act and of any rules, regulations or schemes made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any law except the provisions of the Foreign Exchange Regulation Act, 1973 and the Jrban Land (Ceiling and Regulation) Act, 1976 for the time being in force or in the nemorandum or articles of association of an industrial company or any other instrument saving effect by virtue of any law other than this Act.

46 of 1973. 3 of 1976.

(2) Where there has been under any scheme under the Act an annigamation of a sick industrial company with another company, the provisions of section 72A of the Income-tax Act, 1961, shall, subject to the modifications that the power of the Central Government under that section may be exercised by the Board without any recommendation by the specified authority referred to in that section, apply in relation to such amalgamation as they apply in relation to the amalgamation of a company owning an industrial undertaking with another company.

43 of 1961.

Penalty for certain offering

- 37. (1) Whoever violates the provisions of this Act or any scheme, or any order of the Board and whoever makes a false statement or gives false evidence to the Board, shall be punishable with simple imprisonment for a term which may extend to three years and shall also be liable to fine.
- (2) No court shall take cognizance of any offence under sub-section (1) except on a complaint in writing of the Secretary or such other officer of the Board as may be authorised in this behalf by the Board.

Offences by compenies.

38. (1) Where any offence punishable under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had/exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence punishable under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such

director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

- (a) "company" means any body corporate and includes a firm or other association of individuals; and
  - (b) "director", in relation to a firm, means a partner in the firm.
- 39. (1) If any difficulty arises in giving effect to the provisions of this Act or the rules, or the regulations or schemes or orders made thereunder, the Central Government may, by notification, remove the difficulty:

Power to remove difficulties.

Provided that no such notification shall be made by the Central Government after the expiry of a period of three years from the date of the commencement of this Act.

- (2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.
- 40. (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

Power to make

- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—
  - (a) the salaries and allowances payable to and other terms and conditions of service of the Chairperson and other Members under sub-section (7) of section 5;
  - (b) the powers which may be exercised and the duties which may be performed by the Secretary to the Board under sub-section (1) of section 7;
  - (c) the restrictions and conditions subject to which officers and employees may be appointed to the Board under sub-section (2) of section 7;
  - (d) the salaries and allowances and other conditions of service of the Secretary and other officers and other employees of the Board under sub-section (3) of section 7:
    - (e) any other matter which is required to be, or may be, prescribed.
- 41. (1) The Board may, by notification in the Official Gazette, make regulations consistent with this Act and the rules generally to carry out the provisions of this Act.

Power to make regulations

- (2) In particular and without prejudice to the generality of the foregoing powers, such regulations may provide for all or any of the following matters, namely:—
  - (a) the powers and duties to be exercised and performed by the Secretary under sub-section (I) of section 7;
    - (b) the form of certificate to be issued under sub-section (2) of section 13;
  - (c) the period within which the sick industrial company shall formulate and submit the scheme to the Board under sub-section (4) of section 15;
  - (d) the period within which the Board shall formulate the scheme under subsection (3) of section 16;
  - (e) the period within which the secured creditors shall formulate and submit the scheme to the Board under sub-section (3) of section 17;
  - (f) the procedure to be followed for effecting the sale and the period within which the process of sale shall be completed under section 18;
    - (g) any other matter which is required to be, or may be, specified.

Rules and regulations to be laid before Partiament. 42. Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

Repeal.

43. The Sick Industrial Companies (Special Provisions) Act, 1985 shall stand repealed with effect from the appointed day.

I of 1986.

Dimolution of Authority.

44. (1) With effect from the appointed day, the Appellate Authority for Industrial and Financial Reconstruction constituted under section 5 of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as the Authority) shall stand dissolved.

I of 1986.

- (2) On the dissolution of the Authority,—
- (a) the person appointed as the Chairman or a Member of the Authority and holding office as such immediately before the appointed day under sub-section (/) shall vacate their respective offices and no such Chairman or Member shall be entitled to claim any compensation for the premature termination of the term of his office or of any contract of service;
- (b) the officers and other employees on deputation to the Authority shall stand repatriated to their respective parent departments or organisations;
- (c) the officers and employees, other than those referred to in clause (b), shall stand transferred to the Board;
- (d) any proceeding of whatever nature pending before the Authority immediately before the appointed day shall stand abated;
- (e) the balance of all monies (including any fee) received by, or advanced to, the Authority and not spent by it before the appointed day shall, on the appointed day, stand transferred to, and shall vest in, the Board.

Dissolution of Board. 45. (1) With effect from the appointed day, the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter in this section referred to as the said Board) shall stand dissolved.

I of 1986.

- (2) On the dissolution of the said Board,-
- (a) the person appointed as the Chairman or a Member of the said Board and holding office as such immediately before the appointed day under sub-section (I) shall vacate their respective offices and no such Chairman or Member shall be entitled to claim any compensation for the premature termination of the term of his office or of any contract of service;
- (b) the officers and other employees of the said Board shall be deemed to be the officers and employees of the Board established under this Act.
- (3) Every proceeding pending before the said Board immediately before the appointed day shall be dealt with in the same manner as in the case of a reference dealt under section 15, 16, 17 or 18 of this Act and for purpose of calculation of time stipulated in this Act, the date of commencement of this Act shall be deemed to be the date of reference under this Act.

## SCHEDULE I

[See sections 5 (8) and 7 (3)]

## **DECLARATION OF FIDELITY AND SECRECY**

I, ............. do hereby declare that I will faithfully, truly and to the best of my skill and ability execute and perform the duties required of me as the Chairperson/Member/Secretary/other officer or employee of the Board for Industrial and Financial Reconstruction and which properly relate to the office or position held by me in or in relation to the said Board.

I further declare that I will not communicate or allow to be communicated to any person not legally entitled thereto any information relating to the affairs of the Board, nor will I allow any such person to inspect or have access to any books or documents belonging to or in possession of the Board or the business of any person having any dealing with the said Board.

Signed before me.	Signature.

#### SCHEDULE II

## (See section 19)

#### RESTRUCTURING SCHEME

- I. The restructuring scheme with respect to a sick industrial company may provide for any one or more of the following measures, namely:—
  - (a) the financial reconstruction of the sick industrial company;
  - (b) the proper management of the sick industrial company by change in or take over of management of the sick industrial company;
    - (c) the amalgamation of-
      - (i) the sick industrial company with any other company, or
    - (ii) any other company with the sick industrial company (hereafter in this schedule, in the case of sub-clause (i), the other company and in the case of sub-clause (ii), the sick industrial company, referred to as transferee company);
  - (d) the sale or lease of a part or whole of any industrial undertaking of the sick industrial company;
  - (e) the rationalisation of managerial personnel, supervisory staff and workmen in accordance with law;
    - (f) such other remedial measures as may be appropriate;
  - (g) such incidental, consequential or supplemental measures as may be necessary or expedient in connection with or for the purposes of the measures specified in clauses (a) to (f).
- II. The scheme referred to in paragraph I may provide for any one or more of the following, namely:—
  - (a) the constitution, name and registered office, the capital, assets, powers, rights, interests, authorities and privileges, duties and obligations of the sick industrial company or, as the case may be, of the 'transferee company';
  - (b) the transfer to the transferee company of the business, properties, assets and liabilities of the sick industrial company on such terms and conditions as may be specified in the scheme;
  - (c) any change in the Board of Directors, or the appointment of a new Board of Directors, of the sick industrial company and the authority by whom, the manner in which and the other terms and conditions on which, such change or appointment shall be made and in the case of appointment of a new Board of Directors or of any director, the period for which such appointment shall be made;
  - (d) the alteration of the memorandum or articles of association of the sick industrial company or, as the case may be, of the transferee company for the purpose of altering the capital structure thereof, or for such other purposes as may be necessary to give effect to the reconstruction or amalgamation;
  - (e) the continuation by, or against, the sick industrial company or, as the case may be, the transferee company of any action or other legal proceeding pending against the sick industrial company;
  - (f) the reduction of the interest or rights which the shareholders have in the sick industrial company to such extent as is considered necessary in the interest of the reconstruction, revival or rehabilitation of the sick industrial company or for the maintenance of the business of the sick industrial company;

- (g) the allotment to the shareholders of the sick industrial company, of shares in the sick industrial company or, as the case may be, in the transferee company and where any shareholder claims payment in cash and not allotment of shares, or where it is not possible to allot shares to any shareholder the payment of cash to those shareholder in full satisfaction of their claims—
  - (l) in respect of their interest in shares in the sick industrial company before its reconstruction or smalgamation; or
  - (ii) where such interest has been reduced under clause (f) in respect of their interest in shares as so reduced;
- (h) any other terms and conditions for the reconstruction or amalgamation of the sick industrial company;
- (I) sale of the industrial undertaking of the sick industrial company free from all encumbrances and all liabilities of the company or other such encumbrances and liabilities as may be specified to any person, including a co-operative society formed by the employees of such undertaking and fixing of reserve price for such sale;
- (j) lease of the industrial undertaking of the sick industrial company to any person including a co-operative society formed by the employees of such undertaking;
- (k) method of sale of the assets of the industrial undertaking of the sick industrial company, such as, by public auction or by inviting tenders or in any other manner as may be specified and for the manner of publicity therefor;
- (I) transfer or issue of the shares in the sick industrial company at the face value or at the intrinsic value which may be at discount value or such other value as may be specified to any industrial company or any person including the executives and employees of the sick industrial company;
- (m) such incidental, consequential and supplemental matters as may be necessary to secure that the reconstruction or amalgamation or other measures mentioned in the scheme are fully and effectively carried out.

# STATEMENT OF OBJECTS AND REASONS

The Sick Industrial Companies (Special Provisions) Act, 1985 was enacted to tackle the problem of industrial sickness. Since the expression sick 'industrial company' as defined in that Act was very restricted in scope, the Act was not effective in dealing with incipient or potential sickness. Moreover, certain provisions were liable to misuse resulting in delay in the disposal of cases before the Board. This has very often adversely affected the interests of financial institutions, banks, workers and the government agencies. Hence, the need has been felt to enact in public interest a new law to deal with industrial sickness in the place of the existing Act.

- 2. The main features of the Bill are as follows:-
- (a) the definition of the sick industrial company is based on 'debt default' instead of 'erosion of net worth';
- (b) references to the Board for Industrial and Financial Reconstruction to be established under the proposed Act will be made optional. However, the reference to the Board shall be mandatory in case the sick industrial company has accumulated losses equal to fifty per cent. or more of its net worth;
- (c) under the proposed framework, the role of the Board will mainly be that of a 'mediator' and it will therefore result in elimination of the court culture which the Board seems to have acquired under the existing Act;
- (d) it is proposed to empower the Board to prescribe time limits for different stages so as to expedite the process;
- (e) section 22 of the existing Act provides for automatic stay on all legal proceedings, suits for recovery of money or enforcement of security, etc., against the sick industrial company, but in the Bill it is proposed to provide that such stay will not be automatic but will operate only when specifically so declared by the Board;
- (f) the monitoring of sanctioned schemes by the Board is proposed to be made mandatory;
- (g) the Appellate Authority for Industrial and Financial Reconstruction constituted under the existing Act is proposed to be dissolved.
- 3. The Bill seeks to achieve the above objects.

New Delhi; The 14th May, 1997.

P. CHIDAMBARAM.

## Notes on clauses

Clause 1 deals with the short title, extent, commencement and application of the Act in the first instance, apply to all industries included in the First Schedule to the Industries (Development and Regulation) Act, 1951, except the industry relating to ships and other vessels drawn by power which may, however, be subsequently brought under the purview of the Act by notification.

Clause 2 is a declaration that the Act is being enacted for giving effect to the policy of the State towards securing the members specified in clauses (b) and (c) of article 39 of the Constitution.

Clause 3 contains definitions of the terms used in the legislation.

Clause 4 provides for the establishment of the Board for industrial and financial reconstruction consisting of a Chairperson and not less than two and not more than four-teen other Members being experts in various relevant fields to be appointed by the Central Government.

Clause 5 contains provisions relating to the conditions on which the Central Government should be satisfied before appointing the person as a Member of the Board, the tenure of the members, resignation for removal of a member, the mode of filling up a vacancy and the fixation of salaries and allowances and prescription of other terms and conditions of service of the members.

Clause 6 deals with contingencies in which the Central Government may remove a member from the Board.

Clause 7 provides for appointment by the Central Government of a Secretary assist the Board. It also provides that the Central Government may provide to the Board such other officers and employees as may be necessary.

Clause 8 provides that the salaries and allowances payable to the members and the administrative expenses in respect of the officers and the employees of the Board are to be defrayed out of the Consolidated Fund of India.

Clause 9 provide that in case there shall be any vacancy or defect in the constitution of the Board the sits proceedings shall not be invalidated for such reasons.

Clause 10 provides that the Chairperson, other Members, officers and other employees of the Board shall be deemed to be public servants.

Clause 11 empowers the Board to regulate its own procedures of conduct of the business.

Clause 12 lays down that a sick industrial company may make a reference to the Board. It empowes the Central Government, State Government, public financial institution, State level institution or scheduled bank to make a reference in respect of a sick industrial company to the Board for determination of the measures to be adopted with respect to such company.

Clause 13 provides that a reference to the Board shall be accompanied by a certificate issued by a public financial institution or a State level institution or a scheduled bank which shall be taken as a conclusive proof for sickness of the industrial company.

Clause 14 provides that with a view to safeguard the financial and other interests of the company the Board may appoint special director who shall hold office during the pleasure of the Board.

Clause 15 provides for formulation of a viable restructuring scheme within the specified period.

Clause 16 provides that when the sick industrial company fails to submit the scheme within the specified period the Board shall by mediation within the specified period formulate a viable restructuring scheme.

Clause 17 provides for preparation of a scheme in accordance with certain guidelines by secured creditors to be issued by the Board.

Clause 18 lays down the procedure for the sale of a sick industrial company as a going concern.

Clause 19 lays down that for preparation of the scheme different measures mentioned in Schedule II may be adopted.

Clause 20 provides that as a result of the scheme if any change takes place in the management of a sick industrial company then the Board shall give preference to the professional management groups.

Clause 21 provides that where the whole of the undertaking of the sick industrial company is sold, the Board may distribute the sale proceeds to the parties entitled thereto.

Clause 22 empowers the Board to transfer any property or liability to any other company or person in accordance with the scheme sanctioned by it.

Clause 23 provides that a scheme for amalgamation shall be laid before the company other than the sick industrial company for its approval and the amalgamation shall take place only with the approval of the share holders of the transferee industrial company.

Clause 24 provides that the scheme sanctioned by the Board shall be binding on all parties.

Clause 25 provides that the Board shall periodically monitor implementation of the scheme sanctioned by it.

Clause 26 empowers the Board to forward its opinion to the concerned High Court for winding up of the sick industrial company.

Clause 27 empowers the Board to cause prepare the inventory, books of account, registers, maps, records and list of shareholders and creditors.

Clause 28 provides that when any scheme is under preparation or implementation or the sale is in progress, all suits or proceedings shall be suspended for such period as may be declared by the Board.

Clause 29 empowers the Board to issue directions not to dispose off any assests during the pendency of the reference or the period of preparation or consideration of the scheme or during the period of the sale is in process.

Clause 30 is the usual cluase relating to the protection of action taken in good faith.

Clause 31 provides for rectification of misfeasance, malfeasance, etc., and report of such matters to the Central Government.

Clause 32 bars the jurisdiction of every court, except as provided in the Act against any matter falling within the purview of the Board.

Clause 33 empowers the Board for delegation of its certain powers.

Clause 34 empowers the Central Government to call for any returns and information from the Board. It empowers the Board also to collect any information from the Central Government, Reserve Bank, any scheduled bank, any public financial institution, State level institution or sick industrial company.

Clause 35 provides that the Board may seek the assistance of the Chief Metropolitian Magistrate or the District Magistrate for taking possession of the property of a sick industrial company.

Clause 36 gives overriding effect to the provisions of the legislation over all other enactments except the Foreign Exchange Regulation Act, 1973 and the Urban Land (Ceiling and Regulation) Act, 1976. The powers of the Central Government under section 72A of the Income-tax Act, 1961 to give tax benefit to the transferee industrial company in case of amalgamation are conferred to the Board.

Clause 37 specifies the penalties for violation of the provisions of the legislation or sanctioned schemes or orders of the Board and for making or giving false statement or evidence before the Board.

Clause 38 provides that any offence committed by a company and parameter under the legislation would cover the persons incharge of the company.

Clause 39 is the enabling provision to remove difficulties by the Central Government up to a period of three years.

Clause 40 confers on the Central Government the power to make rules for carrying out the provisions of the legislation.

Clause 41 empowers the Board to make regulations for carrying out the provisions of the legislation.

Clause 42 provides that every rule and every regulation made under the legislation shall be laid before Parliament.

Clauses 44 and 45 provide for the dissolution of the Authority and the Board.

## FINANCIAL MEMORANDUM

Clause 4 of the Bill provides for the establishment of the Board for Industrial and Financial Reconstruction with a Chairperson and not less than two and not more than fourteen other Members to be appointed by the Central Government. Sub-clause (7) of clause 5 provides that the salaries and allowances payable to the Chairperson and other Members of the Board shall be such as may be prescribed. It is expected that in the event of the Board consisting of one Chairperson and fourteen other Members, an annual expenditure of rupees thirty five lakhs, forty nine thousand and six hundred would be incurred towards salary and allowances of the Chairperson and the Members of the Board.

- 2. Under clause 7, the Central Government shall appoint a Secretary to the Board, and provide the Board with such other officers and employees as may be necessary. On account of the salary and allowances of the Secretary, other officers and employees of the Board, an annual expenditure of rupees one crore, forty two lakhs and seventy eight thousand is expected to be incurred.
- 3. In terms of clause 8, the pension payable to the officers and other employees of the Board and administrative expenses will be defrayed from the Consolidated Fund of India. The amount payable as pension cannot be precisely quantified at this stage, although it may be estimated that an an average the amount payable may not exceed rupees three lakes per annum. It is expected that the Board will incur an expenditure of rupees four crores, twenty seven lakes and fifty thousand as establishment and other expenditure annually.
- 4. In terms of clauses 15, 16 and 17 the Central Government may be called upon to provide financial assistance by way of loans, advances, guarantees, reliefs, concessions or other sacrifices of financial nature to certain sick industrial companies in order to rehabilitate them. It is not possible at this stage, to quantify the extent of the financial involvement that may devolve on the Central Government for carrying out the provisions of those clauses.
- 5. In terms of sub-clause (2) of clause 36, in case of amalgamation of a sick industrial company with another non-sick industrial company, the Board shall exercise the powers of the Central Government within the meaning of section 72A of the Income-tax Act, 1961 for giving the benefits of the carry forward of accumulated loss and unabsorbed depreciation of the sick industrial company to the non-sick transferee industrial company. Exercise of these powers by the Board would have the effect of foregoing income tax. The extent of income tax benefit that may be allowed to the transferee industrial company would depend upon the number of schemes that may be approved and the extent of the accumulated loss and unabsorbed depreciation of the sick industrial company being amalgamated. Hence the extent of income tax to be foregone under these provisions cannot be quantified at this stage.

### MEMORANDUM REGARDING DELEGATED LEGISLATION

Clauses 15, 16, 17 and 18 empower the Board to cause schemes to be prepared for the financial reconstruction of a sick industrial company, the proper management of such company by change in or take over of management, the amalgamation with any other company or any other company with the sick industrial company, the sale or lease of a part or whole of any industrial undertaking and such other remedial measures as may be appropriate.

- 2. Sub-clause (3) of clause 24 empowers the Board to do anything consistent with the provisions of the Act for removal of difficulties in giving effect to the provisions of the scheme.
- 3. Clause 39 empowers the Central Government to remove, by notification, any difficulty which may arise in giving effect to the provisions of the Act, with a safeguard that no such notification may be issued after the expiry of a period of three years from the date of commencement of the Act.
- 4. Clause 40 empowers the Central Government to make rules for regulating the salaries and allowances payable to and other terms and conditions of service of the Chairperson and other Members, the powers which may be exercised and the duties which may be performed by the Secretary to the Board, the restrictions and conditions subject to which officers and employees may be appointed to the Board, the salaries and allowances and other conditions of service of the Secretary, officers and other employees of the Board.
- 5. Clause 41 empowers the Board to make regulations relating to powers and duties to be exercised and performed by the Secretary, the form of certificate to be issued, the period within which the sick industrial company shall formulate and submit the scheme to the Board, the period for formulating the scheme, by the Board and secured creditors, the procedure to be followed for effecting the sale and the period within which the process of sale shall be completed.
- 6. The matter with respect to which the scheme or rules may be made are matters of administrative and procedural detail and are matters for which it is not practicable to make provisions in the Bill. The matter in respect of which notification may be made under clause 39 of the Bill are matters which cannot be visualised at this stage.
  - 7. The delegation of legislative power is, therefore, of a normal character.

S. GOPALAN, Secretary-General.